

STATE OF MINNESOTA

COUNTY OF HENNEPIN

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DISTRICT COURT

FOURTH JUDICIAL DISTRICT

City of Minneapolis, a Minnesota municipal corporation,

Plaintiff,

vs.

Minneapolis Police Relief Association
And Minneapolis Firefighters Relief
Association,

Defendants.

BY HELEN CO. DISTRICT
COURT ADMINISTRATOR

Court File No. 27 CV 06-11454

AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT

The above-entitled matter came on for hearing before Judge Janet N. Poston on January 13, 2010, pursuant to Plaintiff's motion for amended findings of fact, conclusions of law and order for judgment. Additional documents were received by the Court on February 25, 2010. John LeFevre, Esq. and Peter Mikhail, Esq. appeared on behalf of Plaintiff. Robert Klausner, Esq. and Charles Lundberg, Esq. appeared on behalf of Defendants.

Based upon the evidence adduced, the arguments of counsel, and all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. The reader is referred to the following prior orders: Order Denying Defendants' Motion to Dismiss, filed January 24, 2007; Minnesota Court of Appeals case A07-420 affirming the Order Denying Defendants' Motion to Dismiss, filed April 15, 2008; and Order Denying in Part and Granting in Part Defendants' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment, filed September 21, 2009 (the "Summary Judgment Order"). The following facts are supplemental or reiterated for emphasis.
2. Based on the Court's prior rulings, three issues remain concerning pension benefit calculations: (1) whether Defendant Minneapolis Firefighter Relief Association (the "MFRA") may include selection premium when calculating sick leave buy-back; (2) whether Defendant Minneapolis Police Relief Association (the "MPRA") may include shift differential when calculating compensatory time off; and (3) whether the MPRA may calculate the shift differential component of unit value based on the total annual hours worked by a top grade police officer.

3. Plaintiff City of Minneapolis ("Plaintiff") is the governing body required to make contributions to the MPRA and the MFRA's (referred together as "Defendants") pension funds.¹
4. On January 1, 1999, Defendants were to begin applying their respective bylaw definitions of salary to calculate unit values and determine benefit amounts. There is no testimony suggesting that anyone of Plaintiff's employees calculated Defendants' unit values. Rather, Defendants' attorneys Jim Michels ("Michels") and Brian Rice ("Rice") of Michels, Rice, and Walther, LLP calculated the unit values.²
5. Starting in 2003 and 2004, the State Auditor questioned the methodology employed by Defendants in their respective unit value calculations. In 2004, after receiving the State Auditor's report, Plaintiff entered into discussions with Defendants about calculating unit values in accordance with the State Auditor's findings. Defendants did not change their calculations of unit values.
6. Plaintiff commenced this lawsuit on June 9, 2006.
7. The parties' trial stipulations were read into the record on October 5, 2009, and are incorporated herein.³

MFRA Sick Leave Buy-Back Benefit

8. The MFRA pension benefits are calculated based on the "maximum monthly salary of a first grade firefighter." Minn. Stat. § 423C.01, subd. 28.
9. The definition of salary, pursuant to the MFRA's bylaws, includes, "to the extent they are payable under a collective bargaining agreement ... the maximum sick leave and vacation buy-back benefit available to first grade Firefighters." Trial Ex. 61. The MFRA Collective Bargaining Agreement ("CBA") states: "[a] selection premium of [sic] shall be added for all hours worked to the top step of Firefighter as follows." Trial Ex. 11, Appendix A. Pursuant to

¹ Plaintiff is not the sole contributor to Defendants' pension funds.

² Michels, Rice, and Walther, LLP, in addition to calculating the unit values, acts as general counsel, legislative lobbyists, and contract negotiators for Defendants. Rice also filed the Answer and the Motion to Dismiss in this lawsuit. Michels and Rice both testified at trial.

³ The Court read Plaintiff's Proposed Stipulation of Facts, received by the Court with Plaintiff's letter dated September 29, 2009. The Court, with approval of both parties, corrected typographical errors contained in the Proposed Stipulation of Facts. If any differences exist between the Proposed Stipulation of Facts and the stipulations as read into the record, the stipulations as they were read into the record govern.

the MFRA CBA, the hourly rate Plaintiff pays current firefighters for sick leave buy-back does not include selection premium, as selection premium pay is only paid for "hours worked".

10. A currently working and active firefighter would not be paid selection premium for sick leave. Defendants have not grieved Plaintiff's refusal to pay selection premium for sick leave, *inter alia*.⁴

11. The MFRA currently calculates the annual maximum sick leave buy-back component of unit value for first grade firefighters by multiplying the number of hours under the labor agreement by an hourly rate based on base wages, longevity, and selection premium, as both Michels and Rice testified.

12. Defendants' calculations are in excess of what a first grade firefighter could earn. The pension benefits, as defined in the MFRA bylaws and indicated by the statutes, should be calculated to the extent they could be earned by a "hypothetical" first grade firefighter.

13. Since January 1, 1999, the MFRA has improperly calculated unit value by including selection premium in its calculation of the sick leave buy-back component of salary, violating the express language in its bylaws, and violating both Minn. Stat. § 423C.01, subd. 28, and Minn. Stat. § 423C.02, subd. 3, which requires the MFRA to regulate itself in accordance with its bylaws. Because of the improper calculations, the MFRA has overpaid its members since that time.

MPRA Shift Differential – Accrued Compensatory Time

14. The MPRA pension benefits are tied to the "current monthly salary of a first grade patrol officer." Minn. Stat. § 423B.01, subd. 20. The MPRA bylaws' definition of salary contains an item for 60 hours of accumulated compensatory time to the extent they are payable under a collective bargaining agreement. Trial Ex. 59. The MPRA currently calculates accumulated compensatory time for unit value purposes by multiplying 60 hours times the hourly rate based on base wages, longevity, and shift differential.

15. An officer working overtime can either be paid the overtime hours or can accumulate the overtime hours and take compensatory time off.⁵ Trial Ex. 1, Sec. 10.2. If an officer is eligible for shift differential while working overtime, the shift differential portion is paid on the officer's

⁴ See testimony of Michels.

⁵ This is earned at a rate of 1.5 hours, which equals overtime paid at a rate of 1 ½ times the hourly rate.

next paycheck whether the officer chose to be paid the overtime hours or chose to bank the overtime hours as compensatory time off. Consequently, shift differential is never paid when the compensatory hours are cashed out because shift differential that was earned has already been paid and because compensatory time is not hours worked. Pursuant to the MPRA CBA, shift differential is paid “for all hours worked.” Trial Ex. 1, Sec. 7.4.

16. Michels testified that the MPRA includes shift differential when calculating compensatory time for pension benefits. However, shift differential is not paid on compensatory time off, as compensatory time off is not hours worked.

17. MPRA’s calculation of shift differential paid on compensatory time off is contrary to the express language contained in the bylaws, which states “to the extent payable under a collective bargaining agreement.”

18. The MPRA improperly calculated the unit value by including shift differential in its calculation of the accumulated compensatory time.

MPRA Shift Differential – Calculation of Hours

19. The MPRA bylaws’ definition of salary contains an item for shift differential. The MPRA currently calculates the annual amount for shift differential by multiplying 2088 hours by the shift differential rate specified in the CBA.

20. Under the MPRA CBA, a top grade police officer earns 208 hours of vacation per year.

21. The MPRA bylaws’ definition of salary includes shift differential “to the extent [it is] payable under a collective bargaining agreement.” The MPRA CBA states shift differential is only available for hours worked between 6:00 p.m. and 6:00 a.m.; however, it does not limit the number of hours an officer may work while eligible for shift differential.

22. The MPRA CBA does not require that a police officer use any vacation hours instead of working. Plaintiff offered no evidence that an officer must take vacation. As such, an officer could work 2088 hours in a year, which all qualified for shift differential, without taking any vacation. Unused vacation time may be “cashed in,” carried forward to the next year, or lost.

23. The MPRA properly calculated unit value by applying shift differential to 2088 hours, the stipulated total hours a police officer could work in a year.

Overpayments to Defendants’ Members

24. The testimony by Plaintiff’s financial expert Michael de Leon is credible.

25. As stated in the Summary Judgment Order, the MFRA violated its bylaws by adding “new items” to the definition of salary for the purposes of setting the unit value without amending its bylaws as required by Minn. Stat. § 69.77, subd. 11. The MFRA added the following “new items:” (1) health club dues; (2) vacation cash out; (3) work out of grade; (4) performance pay; and (5) holiday pay.
26. Based upon the Summary Judgment Order, the MFRA violated its bylaws by including 136 hours of non-FLSA overtime instead of using the average of non-FLSA overtime hours actually worked in the immediately preceding year.
27. Based on the rulings in the Summary Judgment Order, the MFRA, for the years 2003 to 2009, overpaid approximately \$17.3 million to its members due to its overstatement of unit values. Trial Ex. 75.
28. Based on the Summary Judgment Order and the findings herein, the MFRA overpaid pension benefits to its members by including selection premium on sick-leave buy-back component of salary. The MFRA has overpaid its members since the MFRA’s bylaw definition of salary took effect on January 1, 1999.
29. Based upon the Summary Judgment Order, the MPRA violated its bylaws by adding “new items” to the definition of salary for the purposes of setting the unit value without amending its bylaws as required by Minn. Stat. § 69.77, subd. 11. The MPRA added the following “new items:” (1) vacation credit pay; (2) performance premium; (3) holiday pay; (4) corporal pay; and (5) overtime.
30. Based upon the Summary Judgment Order, the MPRA violated its bylaws by including shift differential in its calculation of the sick leave buy-back benefit.
31. Based on the rulings in the Summary Judgment Order, the MPRA, for the years 2003 to 2009, overpaid approximately \$35.3 million to its members due to its overstatement of unit values. Trial Ex. 75.
32. Based on the Summary Judgment Order and the findings herein, the MPRA overpaid pension benefits to its members. The MPRA has overpaid its members since the MPRA’s bylaw definition of salary took effect on January 1, 1999.
33. Since January 1, 1999, the MPRA overpaid its members by calculating unit value with the inclusion of shift differential on the accumulated compensatory time component of salary.

34. Since January 1, 1999, the MPRA has not overpaid its members by calculating unit value with the inclusion of shift differential on 2088 hours per year.

Harm to Plaintiff

35. Each of Defendants' overpayments of benefits resulted in an increase in Plaintiff's required contributions to cover Defendants' respective unfunded liabilities.

36. Defendants caused great and irreparable harm to Plaintiff in setting their unit values in violation of their respective bylaws and the applicable statutes.

37. Defendants failed to offer credible evidence in contradiction or mitigation of the finding of great and irreparable harm.

38. The MFRA's overpayment of benefits to its members for 2003 through 2009 increased Plaintiff's past financial obligations by approximately \$19.1 million and its future financial obligations by an estimated \$24.4 million. Trial Ex. 77.

39. The MPRA's overpayment of benefits to its members for 2003 through 2009 increased Plaintiff's past financial obligations by approximately \$39.6 million and its future financial obligations by an estimated \$62.4 million. Trial Ex. 79.

40. Defendants' pension expert, Mark Meyer, testified that in the event of benefit overpayments, Defendants have a fiduciary duty to collect overpayments. Meyer testified that Defendants may seek retroactive plan amendments to ratify past payments, and that this is a common administrative practice. In this case, any such plan amendment requires Plaintiff's ratification pursuant to Minn.Stat. §69.77, subd.11. If the plans are not retroactively amended, then Defendants have a fiduciary duty to seek recoupment of the benefit overpayments. Mr. Meyer testified that one example of a method Defendants may employ to implement a correction would be to freeze benefits.

CONCLUSIONS OF LAW

1. Pursuant to Minn. Stat. § 555.01, the Court has the power and jurisdiction to construe rights of the parties. "The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree." Minn. Stat. § 555.01 (2009). Minn. Stat. § 555.02 allows Plaintiff to seek a declaration of rights:

Any person ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or

franchise and obtain a declaration of rights, status, or other legal relations thereunder.

2. The MPRA and MFRA are required by law to regulate themselves in accordance with their respective bylaws. Minn. Stat. § 423B.05, subd. 2 (2001); Minn. Stat. § 423C.02, subd. 3 (2001). Defendants' respective bylaws detail what items are to be included for the purpose of calculating pension benefits, including a definition of salary.

Defendants' Defense of Laches

3. The Court's legal analysis of Defendants' defense of laches in the Summary Judgment Order is incorporated by reference.

4. Plaintiff did not unreasonably delay in bringing the present claims against Defendants. For laches to bar a claim, a defendant must show the plaintiff unreasonably delayed asserting its known right, resulting in a prejudice to others such that the relief sought should be denied. *Winters v. Kiffmeyer*, 650 N.W.2d 167, 170 (Minn. 2002). Defendants violated Minn. Stat. § 69.77 by calculating pension benefits contrary to the definition of salary contained in the Defendants' bylaws. Defendants' violation of Minn. Stat. § 69.77 does not stem from Defendants' failure to amend their bylaws; it comes from Defendants' calculation of pension benefits that is contrary to the definition of salary contained in their bylaws. As the Court ruled in the Summary Judgment Order, Plaintiff did not discover the violation until 2004. Plaintiff filed this suit on June 9, 2006, two years after Plaintiff discovered Defendants' miscalculation of pension benefits and after attempts to resolve the issues were unsuccessful. While there was a delay in the time from discovery to filing, there is no evidence said delay was unreasonable under the circumstances.

5. Defendants' use after 1998 of the 1996-1998 formula contained in the Settlement Agreement does not support a defense of laches. The 1996-1998 formula was for use only between 1996 and 1998. The definition of salary was otherwise to be used for all pension benefit calculations. The stated purpose for the inclusion of a definition of salary in Defendants' bylaws was to avoid future controversies. Defendants continued use of the 1996-1998 formula to calculate pension benefits, rather than the definition of salary, was directly contrary to those bylaws.

Statute of Limitations on Plaintiff's Claims

6. Plaintiff's claims are not barred by the six year statute of limitations established by Minn. Stat. § 541.05. The statute of limitations starts to run against a cause of action the moment the cause of action may be commenced. *Hughes v. Lund*, 603 N.W.2d 674, 677 (Minn. Ct. App. 1999). Defendants' violation of statute occurred every time they calculated pension benefits using the definition of salary contrary to their bylaws. As such, Plaintiff acquired a cause of action for every year Defendants submitted their pension benefit calculations using their faulty application of their respective bylaws' definition of salary.

7. While Defendants may have miscalculated pension benefits prior to 2000, that does not bar Plaintiff from bringing suit on miscalculations made within the six-year statute of limitations period. Since the suit was brought on June 9, 2006, any calculation submitted to Plaintiff after June 9, 2000 is not barred by the statute of limitations.

Validity of Defendants' Acts due to Statutory Changes

8. The 2001 recodification of Minnesota Statutes, Chapter 423C does not validate MFRA's miscalculations. The 2001 recodification of Minn. Stat. 423C states:

This article is not intended to increase or reduce the pensions or benefits currently payable to pension and benefit recipients of the Minneapolis firefighters relief association, except as provided in Minnesota Statutes, section 423C.05, subdivision 9. All pensions and benefits payable from the Minneapolis firefighters relief association in force on the effective date of this section as reflected in the records of the relief association as of that date continue.

2001 Minn. Sess. Law Serv., 1st Sp. Sess., ch. 10, art. 15, § 16. The language of the recodification expressly states that it is not intended to increase pension benefits payable by the MFRA. Calculations of unit value that violated Defendants' bylaws were not properly payable. The recodification does not legitimize Defendants' prior improper calculations which increased Plaintiff's obligation.

Recoupment of Overpayment

9. Plaintiff has no adequate remedy at law for Defendants' past overpayments of benefits to individual members and beneficiaries.

10. As stated at trial by Defendants' pension expert, Mark Meyer, Defendants owe fiduciary duties to their members, as well as to the taxpayers of the State of Minnesota and Plaintiff.

11. Defendants have a fiduciary duty to recoup past overpayments from the individual members and beneficiaries who received overpayments since 2000.

12. Defendants have the right to recoup benefit overpayments made since June 9, 2000, to the individuals who are members and beneficiaries of their funds.

13. Plaintiff is entitled to injunctive relief directing Defendants to recoup benefit overpayments from the members and beneficiaries who received the same from June 9, 2000, to the date the benefits are recalculated to the correct amount in accordance with the orders in this case.

14. In its brief to this Court in opposition to Defendant's motion to dismiss for failure to join necessary parties, Plaintiff stated: "[h]ere, the City's action is against Defendants, for their alleged breach of the Settlement Agreement, not against the individual members of the relief associations for a reduction in their benefits. In fact, a reduction of benefits is not necessarily an outcome or resolution of the City's claims."⁶

15. Minn. Stat. § 69.77, subd. 8 states:

Any sums of money paid by the municipality to the relief association in excess of the minimum obligation of the municipality in any year must be used to amortize any unfunded actuarial accrued liabilities of the relief association.

Minn. Stat. § 69.77 provides for an *explicit, precise, and unambiguous* remedy when overpayments are made to the MFRA and MPRA pension plans: the overpayment must be used to amortize unfunded actuarial liabilities. Testimony was elicited at trial indicating Plaintiff's unfunded actuarial liability. Plaintiff is not entitled to the equitable remedy of recoupment from Defendants because there is an adequate remedy at law provided in Minnesota Statute § 69.77. *Borom v. City of St. Paul*, 289 Minn. 371, 376 (1971).

16. Plaintiff cites to cases in support of its proposition that recoupment is a remedy used to collect overpayments. Plaintiff's citations are not applicable to the case herein, where there is a direct statutory mandate regarding the overpayment of funds, and the pensioners are not joined parties. Every case Plaintiff cited in support of its proposition for recoupment involved a suit between a pensioner and a retirement fund. As iterated by this Court, the pensioners are not joined parties. *See In re Disability Earnings Offset of Masson*, 753 N.W.2d 755 (Minn. Ct. App.

⁶ Plaintiff's Memorandum in Opposition to Motion to Dismiss, filed October 6, 2006.

2008) (suit was directly between pensioner and fund for disability earnings as opposed to the case at bar where the pensioners are not joined parties); *Teater v. DSM Engineering Plastics*, No. 05-5779, 2006 WL 1308287 (E.D. Pa. May 11, 2006) (same); *Brown v. General Motors Corp.*, 152 B.R. 935 (Bankr. W.D. Wis. 1993) (same); *In re Martin v. Teacher's Retirement System of City of New York*, No. 114942/08, 2009 WL 2184354 (N.Y. Sup. Ct. July 14, 2009) (same).

17. Plaintiff is not entitled to the equitable remedy of recoupment against Defendants. As stated in Conclusion of Law No. 11, *supra*, Defendants do have a fiduciary duty to recoup past overpayments from the individual members and beneficiaries who received overpayments since 2000.

Unit Value Calculation

18. Plaintiff is entitled to permanent injunctive relief requiring Defendants to correct their unit value calculations. A party seeking a permanent injunction must establish there is no adequate legal remedy available and that the injunction is “necessary to prevent a great and irreparable harm.” *Jackal v. Brower*, 668 N.W.2d 685, 688 (Minn. Ct. App. 2003) (citing *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979)). Whereas preliminary injunctions are issued after a hearing and prior to trial to maintain the *status quo*, permanent injunctions are issued after a right to such relief is established on the merits. *Bio-Line, Inc. v. Burman*, 404 N.W.2d 318, 320-21 (Minn. Ct. App. 1987). When the facts proven at trial indicate that a plaintiff is entitled to such relief, a permanent injunction shall issue. *Theros v. Phillips*, 256 N.W.2d 852, 859 (Minn. 1977).

19. As the Court has previously ruled, and the Minnesota Court of Appeals has affirmed, Plaintiff has no adequate remedy at law in Minn. Stat. § 69.77 to correct the unit value calculations or to have Defendants recalculate and resubmit their levy requests.

20. Plaintiff has shown that it will be greatly and irreparably harmed if a permanent injunction does not issue, based on the testimony elicited at trial from both Plaintiff's and Defendants' actuaries. Since 1999, Plaintiff has expended more funds than its minimum obligation based on incorrect unit value calculations. If allowed in the future, said miscalculations will exponentially and improperly compound Plaintiff's minimum obligations.

21. Plaintiff is entitled to permanent injunctive relief requiring Defendants correct the unit value calculations starting in June 2000, such that they are consistent with the orders in this case.

22. Plaintiff is entitled to permanent injunctive relief requiring Defendants to recalculate and resubmit their current levy request in accordance with the orders in this case.

Plaintiff's Motions to Strike

23. Plaintiff's Motion to Strike Defendants' exhibit numbers 10 – 18, 36, and 38 is granted for the reasons stated in Plaintiff's Motion to Strike submitted October 27, 2009.

24. Plaintiff's Motion to Strike Defendants' exhibit numbers 50, 52, and 68 is denied.

Defendants' Motions to Strike

25. Defendants' Motion to Strike Plaintiff's exhibits is denied.

ORDER

1. It is adjudged and declared that:
 - a. Defendant MFRA's computation of sick leave buy-back with selection premium is contrary to Defendant MFRA's bylaws and is a violation of Minn. Stat. §423C.02, subd. 3.
 - b. Defendant MPRA's inclusion of shift differential in the calculation of compensatory time is contrary to Defendant MPRA's bylaws and is a violation of Minn. Stat. § 423B.05, subd. 2.
 - c. Defendant MPRA's use of 2088 hours in the calculation of shift differential is not contrary to Defendant MPRA's bylaws and is not a violation of Minn. Stat. § 423B.05, subd. 2.
2. On or before June 4, 2010, Defendants shall recalculate the pension benefit unit values from June 2000 through December 2009 in accordance with this and prior orders of the Court.
3. Defendants shall use said recalculated unit values to determine pension benefit amounts Defendants overpaid their members and beneficiaries from June 9, 2000, forward. Defendants shall recoup those overpayments from their members and beneficiaries. In recouping said overpayments, Defendants shall apply the standard of care customarily exercised by professional fiduciaries administering pension plans in recouping overpayments. Defendants shall oppose any and all challenges to the recoupment.
4. Defendants shall present their recoupment plan to the Plaintiff and the Court no later than

June 4, 2010.

5. Defendants shall commence recoupment on July 1, 2010.
6. Defendants MPRA and MFRA are hereby enjoined as follows:
 - a. On or before November 30, 2009, Defendants MPRA and MFRA shall recalculate their members' and beneficiaries' unit values from 2000 forward in accordance with all the court orders in this case.
 - b. On or before November 30, 2009, Defendants MPRA and MFRA shall revise and resubmit their respective 2010 levy requests to Plaintiff in accordance with said revised unit values.
7. Plaintiff's request for recoupment of overpayments to the funds is denied.
8. The Plaintiff's payments over the amounts of its minimum obligations for each year since 2000 must be used to amortize any unfunded actuarial accrued liabilities of Defendants MFRA and MPRA, which unfunded actuarial accrued liabilities shall be determined in accordance with all the court orders in this case.
9. The Court reserves ruling on the length of time over which amortization of Defendants MPRA and MFRA's overpayments to their members and beneficiaries from 2000 forward will be spread. If the parties are unable to resolve this issue, they shall so advise the Court by Dec. 4, 2009, and a briefing schedule shall be established.
10. The attached Memorandum of Law is hereby incorporated by reference.

BY THE COURT:

Dated: May 17, 2010


Janet N. Poston
Judge of District Court

MEMORANDUM OF LAW

Paragraph 9 of the original Conclusions of Law is incomplete and did not distinguish between (1) Plaintiff's excess contributions to Defendants because of Defendants' incorrect calculations of unit values since 2000 and (2) Defendants' overpayments to individual members and beneficiaries since 2000 because of Defendants' incorrect calculations of unit values.

First, Defendants' incorrect calculations of unit values for each year since 2000 resulted in requests for contributions from Plaintiff. Plaintiff contributed the requested amounts. Plaintiff's contributions exceeded the amount of contributions Plaintiff would have made if the unit values had been properly calculated.

Second, regarding Defendants' overpayments to individual members and beneficiaries since 2000, Plaintiff has no adequate remedy at law. Defendants' incorrect calculations of unit value for each year since June 1, 2000, resulted in Defendants' making overpayments of benefits to their individual members and beneficiaries. Defendants have a fiduciary duty to collect benefit overpayments they made to individual members and beneficiaries, per the testimony of Defendants' actuary, Mark Meyer.⁷ Since Plaintiff is without an adequate remedy at law, Plaintiff seeks injunctive relief directing Defendants to collect past overpayments from individual members and beneficiaries. Plaintiff's request for injunctive relief is appropriate.

There are a few methods by which Defendants could fulfill their fiduciary duty to collect overpayments. Mr. Meyer testified that it is common administrative practice to retroactively adopt plan amendments.⁸ Mr. Meyer testified that another way to correct overpayments if the unit value calculations were wrong would be to freeze the overpayments in place for an interim period. In other words, locking the overpayments in place for a period of time until the amount is corrected, so that the beneficiaries would be protected. It is noted that freezing benefits is not a reduction of benefits. When benefits are frozen, they are not reduced.

It is also noted that Plaintiff's inability to recoup from Defendants' members and beneficiaries does not preclude Defendants collecting from their members and beneficiaries. Nor does the imposition of an injunction require that the individual members and beneficiaries be joined as parties. As stated by the Court of Appeals,

All of the individuals whose interests could be affected by a declaratory judgment are represented by the associations. And we agree with the district court's observation that this case is primarily "a dispute between the contributor to and the administrators of the pension funds about the proper method of calculating the

⁷ The fiduciary duty Defendants owe to the individual members and beneficiaries is different from a fiduciary duty Defendants may owe Plaintiff. In any event, Plaintiff no longer claims that Defendants owe a fiduciary duty to Plaintiff.

⁸ Minn.Stat. §69.77, subd. 11 requires that Defendants seek ratification for such an action from Plaintiff.

contributor's minimum obligation." The individual members of the associations are not indispensable parties.

City of Minneapolis v. Minneapolis Police Relief Assoc., No. A07-420, 2008 WL 1747923, at *4 (Minn. Ct. App. April 15, 2008). Defendants' members are not indispensable parties and Plaintiff is not able to recoup from them individually. Plaintiff acknowledged that it was not seeking recoupment from the individual members in Plaintiff's Memorandum in Opposition to Motion to Dismiss filed October 6, 2006, stating:

[h]ere, the City's action is against is against Defendants, for their alleged breach of the Settlement Agreement, not against the individual members of the relief associations for a reduction in their benefits. In fact, a reduction of benefits is not necessarily an outcome or resolution of the City's claims.

However, Plaintiff's request that Defendants recoup from their members is not contrary to Plaintiff's stated position that Plaintiff is not seeking recoupment from the individual members. Since Defendants owe a fiduciary duty to their members to collect overpayments of member benefits, Plaintiff's request that Defendants recoup benefit overpayments is an exercise of Defendants' powers as fiduciaries to their members and not a recoupment by Plaintiff.

Since the Findings of Fact, Conclusions of Law, and Order, filed November 20, 2009, is incomplete as to Defendants' duty to its members, the Order has been amended to reflect Defendants' duty to recalculate its members' benefits' unit values from 2000 forward and Defendants' duty to recoup from their members and beneficiaries.

J.N.P.